

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
ANGELA DIELE,

Docket No.:1:23:cv:04841

Plaintiff,

-against-

THE CEDARWOOD COMPANIES INC.,

Defendant.
-----X

**DECLARATION OF ERIC MALINOWSKI, IN OPPOSITION TO ORDER TO
SHOW CAUSE TO DISMISS OR TRANSFER PURSUANT TO 28 U.S.C. 1406(A)**

I, ERIC MALINOWSKI, declare as follows:

1. I am an attorney at Camacho Mauro LLP, counsel for Plaintiff Angela Diele in the above captioned action. I submit this declaration in opposition of the Court's Order to Show Cause to dismiss or transfer this action pursuant to 28 U.S.C. 1406(a). I make this Declaration based upon my own personal knowledge and upon review of documents as to which the Court may properly take judicial notice of.

JURISDICTION AND VENUE

2. Plaintiff, ANGELA DIELE, was and is an individual domiciliary and resident of New York, residing in the Borough of Brooklyn, New York. On the day of the accident, September 30, 2021, Plaintiff was a resident of Brooklyn, New York.

3. Upon information and belief, at all times hereinafter mentioned, defendant, THE CEDARWOOD COMPANIES INC., is a national real estate development company and property management company which leases and manages retail storefronts and parking lots throughout the United States, including areas in New York.

4. While CEDARWOOD COMPANIES INC is a foreign business corporation duly incorporated pursuant to the laws of Ohio, with a principal place of business in Ohio. Upon

information and belief, defendant THE CEDARWOOD COMPANIES INC. manages two storefronts in New York on behalf of Advance Auto Parts and four locations on behalf of Walmart Inc.

5. Defendant THE CEDARWOOD COMPANIES INC. advertises and solicits business under its website <https://www.cedarwoodcompanies.com/>. On its website it advertises that it has “assisted in the development, design, construction and management of” 2 locations of Advance Auto Parts Inc, in New York. Additionally, on its website it advertises that it has “assisted in the development, design, construction and management” of 4 locations of Walmart Inc.

CAUSE OF ACTION AS TO THE CEDARWOOD COMPANIES

6. On or about September 30, 2021, and at all times relevant to this complaint, defendant, THE CEDARWOOD COMPANIES, was and still is the owner of a certain premises and land known as “The Pocono Center”, located, in East Stroudsburg, Pennsylvania.

7. On or about September 30, 2021, and at all times relevant to this complaint, Plaintiff was caused to trip and fall in the parking lot at the aforesaid premises due to its unsafe and/or dangerous condition. As a result of the accident the Plaintiff suffered a fractured ankle that required surgery.

8. While Plaintiff initially was treated at Lehigh Valley Hospital in East Stroudsburg, Pennsylvania; on October 4, 2021, she came under the care of Dr. Orry Erez of Maimonides Bone and Joint Center, located at 6010 Bay Parkway, Brooklyn, NY 11204.

9. On October 8, 2021, a few days after the accident, the Plaintiff underwent surgery on her fractured ankle at Maimonides Medical Center in Brooklyn, New York. Dr. Erez performed this surgery.

10. Plaintiff, treated with Dr Erez from October 4, 2021, until September 16, 2022.

RELEVANT DOCUMENTS

11. Attached hereto as Exhibit 1 is a true and accurate screenshot of Defendant's website <https://www.cedarwoodcompanies.com/>.
12. Attached hereto as Exhibit 2 is a true and accurate screenshot of Defendant's website <https://www.cedarwoodcompanies.com/leasing/?type=retail-space> which illustrates the East Stroudsburg location known as the Pocono Center as well as Advance Auto Parts and Walmart.
13. Attached hereto as Exhibit 3 is a true and accurate screenshot of Defendant's website <https://www.cedarwoodcompanies.com/leasing/properties/pocono-center/> illustrating the Pocono Center which is the location of the accident.
14. Attached hereto as Exhibit 4 is a true and accurate screenshot of Defendant's website <https://www.cedarwoodcompanies.com/leasing/properties/advance-auto-parts/> which illustrates its New York locations.
15. Attached hereto as Exhibit 5 is a true and accurate screenshot of Defendant's website. <https://www.cedarwoodcompanies.com/leasing/properties/walmart/> which illustrates its New York locations.
16. Attached hereto as Exhibit 6 is a true and accurate copy of Plaintiff's operative report of October 8, 2021.

DATED: July 10, 2023
New York, New York


CAMACHO MAURO, LLP

Eric S. Malinowski, Esq.
Attorneys for Plaintiff
40 Wall Street | 40th Floor
New York, New York 10005
(212) 947-4999
Our File No.: PLTY-5111-E

To: (See Affidavit attached)

EXHIBIT 1

7/11/23, 11:01 AM

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info@cedarwood.com



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7/11/23, 11:01 AM

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Mission Statement

Cedarwood is a fully integrated national real estate development company devoted to our core principles of honesty, loyalty, trust and respect. These core principles form the basis of our relationships with our clients, our employees, our partners and our vendors.

We provide a full range of real estate development services as we strive to achieve the goals of our clients while building long-standing relationships along the way. We utilize the specialized knowledge from our team of professionals and provide a seamless, timely and cost-effective approach to meet our client's needs with an entrepreneurial culture of commitment.

Since our inception in 1972, we are a company that focuses on the satisfaction of our client's needs above all else.

Our Companies Work Together

Develop > Design > Build > Manage



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EXHIBIT 2

Fayette Crossing

Lenexa, KS

Hermitage Crossing

Macedonia, OH

Lenexa, Kansas – Mixed Use Site

Lancaster, PA

Ohio Rt 8 and Highland Rd.

Stroudsburg, PA

Parkview Plaza

Waterville, ME

Pocono Center

Waterville Commons


Miscellaneous Shopping Centers

Advance Auto parts


Houston, TX

CVS Pharmacy


EXHIBIT 3


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Stroudsburg
PA




367,981
Square Footage



10
Store Fronts



50,872
5 Mile Pop.



Kelly Sweress
Director of Retail Leasing
330.664.9405
ksweress@cedarwoodd.com

[Leasing Flyer](#)

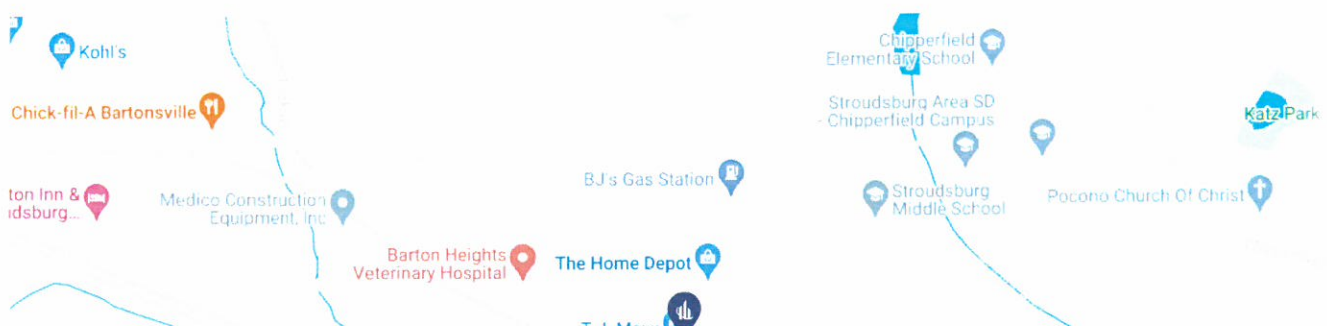




Project Details

Pocono Center is a power shopping center located in Stroudsburg, Pennsylvania at the intersection of State Rte 611 and Pocono Commons Boulevard. The center is almost 368,000 square feet and anchored by Target, Home Depot and BJ's Wholesale Club. Other key tenants include T.J. Maxx, Party City, Pocono Urgent Care and Holiday Hair. Pocono Commons Boulevard traffic counts are 21,000 vehicles per day at this site.

Other area attractions include Pocono Motor Speedway, The Crossings Premium Outlets and Camelback Mountain Resorts that provides year-round sports including winter skiing and summer activities.





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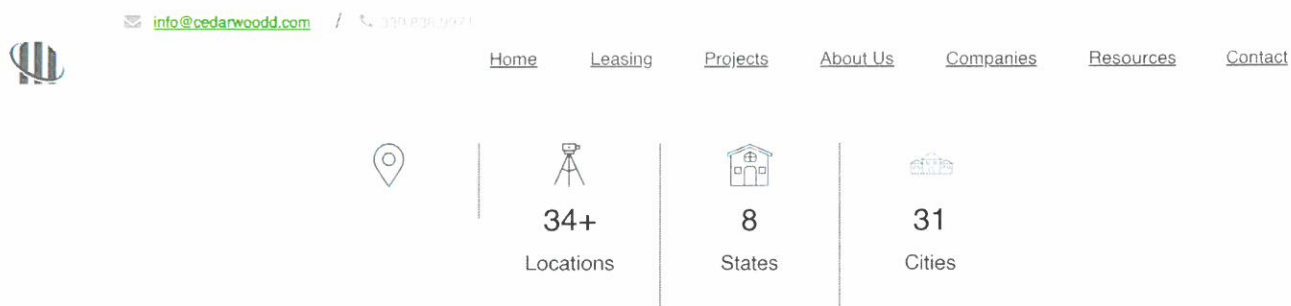
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EXHIBIT 4



Project Details

Advance Auto Parts, Inc. is a leading automotive aftermarket parts provider headquartered in Raleigh, N.C., that serves both professional installer and do-it-yourself (DIY) customers. As of July 13, 2019, Advance operated 4,912 stores and 150 Worldpac branches in the United States, Canada, Puerto Rico and the U.S. Virgin Islands. The Company also serves 1,250 independently owned Carquest branded stores across these locations in addition to Mexico, the Bahamas, Turks and Caicos and British Virgin Islands. The company's stores and branches offer a broad selection of brand name, original equipment manufacturer and private label automotive replacement parts, accessories, batteries and maintenance items for domestic and imported cars, vans, sport utility vehicles and light and heavy duty trucks. Cedarwood Companies, Inc. has assisted in the development, design, construction and management of 34+ locations;

- Ohio – 10 Locations
- Massachusetts – 6 Locations
- Rhode Island – 4 Locations
- Pennsylvania – 4 Locations
- Missouri – 4 Locations
- Kansas – 3 Locations
- New York – 2 Locations
- Texas – 1 Location



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65+
Sites

56+
Cities

16+
States



Project Details

Walmart Inc. is an American multinational retail corporation that operates a chain of hypermarkets, discount department stores, and grocery stores, headquartered in Bentonville, Arkansas. The company was founded by Sam Walton in 1962 and incorporated on October 31, 1969. As of October 31, 2019, Walmart has 11,438 stores and clubs in 27 countries. It is the largest private employer in the world with 2.2 million employees. Walmart was the largest U.S. grocery retailer in 2019. By 1988, it was the most profitable retailer in the U.S., and it had become the largest in terms of revenue by October 1989. Cedarwood Companies, Inc. has helped to develop, design, build and manage over 65 locations across the US.

- Ohio – 23 Locations
- Pennsylvania – 8 Locations
- Indiana – 5 Locations
- New York – 4 Locations
- Connecticut – 2 Locations
- Kentucky – 2 locations
- Texas – 2 Locations
- West Virginia – 2 Locations
- Florida – 1 Locations
- Illinois – 1 Location
- Louisiana – 1 Location
- Maine – 1 Location
- Massachusetts – 1 Location
- North Carolina – 1 Location



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EXHIBIT 6



Brooklyn, NY 11219

OPERATIVE REPORT

DATE OF OPERATION: 10/08/2021
PATIENT NAME: DIELE, ANGELA
MED REC #: 81335721
ACCOUNT NUMBER: 001639080
ATTENDING PHYSICIAN: Orry Eres, MD
ANESTHESIA:

PREOPERATIVE DIAGNOSES:

1. Right ankle trimalleolar equivalent.
2. Right ankle syndesmosis injury.

POSTOPERATIVE DIAGNOSES:

1. Right ankle trimalleolar equivalent.
2. Right ankle syndesmosis injury.

NAME OF PROCEDURE:

1. Right ankle open reduction internal fixation lateral malleolus.
2. Open reduction internal fixation of the syndesmosis.

OPERATIVE IMPLANTS: Stryker distal fibular locking plate, appropriate screws, Biomet.

SPECIMENS: None.

INDICATIONS: The patient is a 52-year-old female with a history of right ankle fracture. Patient had a fracture-dislocation of the ankle. Patient was told about operative and nonoperative alternatives. Risks and benefits were discussed including but not limited to infection, bleeding, nerve damage, fracture, DVT, PE, possible death. Patient was told about possible syndesmotic fixation. All questions were answered. Informed consent was obtained. Patient stated that she did not want to have multiple surgeries and it was elected to place an EndoButton fixation for the syndesmosis if this were to be needed.

DESCRIPTION OF PROCEDURE: Patient was identified in the preoperative holding area with 2 patient-specific identifiers. Patient's operative site was marked. Patient was brought to the operative suite. Patient was administered anesthesia by anesthesia staff. Antibiotics were given within 1 hour of surgical procedure. Operative timeout was performed per

OPERATIVE REPORT

Page 1

Insert Chart Confidentiality Message



Brooklyn, NY 11219

OPERATIVE REPORT

DATE OF OPERATION: 10/08/2021

PATIENT NAME: DIELE, ANGELA

MED REC #: 81335721

ACCOUNT NUMBER: 001639080

ATTENDING PHYSICIAN: Orry Erez, MD

Maimonides Medical Center protocol. Patient was sterilely prepped and draped in normal fashion.

A lateral incision was made over the fibula. Distal fascia and periosteum were incised. Superficially the soft tissue was bluntly dissected. Fracture was identified. Fracture was irrigated and debrided of soft tissue and hematoma. The fracture was then reduced with a lobster claw. A 2.7 interfragmentary screw was then placed using lag technique. There was good purchase. The clamp was removed. A distal fibular locking plate was then placed. Screws were placed proximally and distally. The fibula was then tested with external stress. There was significant widening of the syndesmosis. It was elected to proceed with syndesmosis fixation.

The syndesmosis was clamped. A Biomet fixation device was then utilized with 4 cortices and EndoButton flipped appropriately. The clamp was removed. There was good fixation. There was no widening with external stress.

The area was copiously irrigated. Incision was closed with 0, 2-0 and staples. Dermabond was placed. Sterile dressing was placed. All sponge, instrument and needle counts were correct. A short leg nonweightbearing cast was placed. Patient tolerated the procedure well.

Electronically Signed by Orry Erez, MD
11/05/2021 00:00:00
**THIS IS A PRELIMINARY REPORT AND MUST NOT BE CONSIDERED FINAL
UNTIL ACCOMPANIED BY A PHYSICIAN SIGNATURE.**

Orry Erez, MD

DICTATED BY: Orry Erez, MD

OE/5557293

DD: 10/09/2021 20:57

DT: 10/10/2021 08:25

OPERATIVE REPORT

Page 2

Insert Chart Confidentiality Message



Brooklyn, NY 11219

OPERATIVE REPORT

DATE OF OPERATION: 10/08/2021
PATIENT NAME: DIELE, ANGELA
MED REC #: 81335721
ACCOUNT NUMBER: 001639080
ATTENDING PHYSICIAN: Oxy Erez, MD
SSI File#: 2062181335721110092021205706833
Job #: 711299

OPERATIVE REPORT
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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

AnaMaria Suarez, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Bronx County, New York.

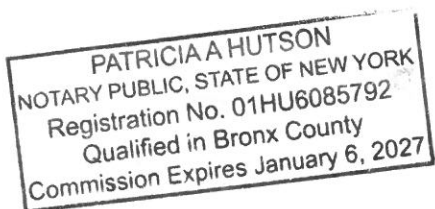
That on July 11, 2023, deponent served the within, **DECLARATION OF ERIC MALINOWSKI, IN OPPOSITION TO ORDER TO SHOW CAUSE TO DISMISS OR TRANSFER PURSUANT TO 28 U.S.C. 1406(A)** upon the attorneys/individuals listed below, at his/her/its addresses which were so designated by said attorneys for said purpose, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York:

TO:
The Cedarwood Companies Inc.
3200 W. Market St., Suite 200,
Fairlawn, OH 44333


AnaMaria Suarez

Sworn to before me this
11th day of July 2023


Notary Public



Docket No.: 1:23:cv:04841

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ANGELA DIELE,

Plaintiff(s),

- against -

THE CEDARWOOD COMPANIES INC.,

Defendant(s).

**, DECLARATION OF ERIC MALINOWSKI, IN OPPOSITION TO ORDER TO SHOW
CAUSE TO DISMISS OR TRANSFER PURSUANT TO 28 U.S.C. 1406(A)**

CAMACHO MAURO, LLP

Attorneys for Plaintiff(s)

40 Wall Street | 41st Floor

New York, NY 10005

(212) 947-4999

Our File No.: PLTY-5111-E

To: The Cedarwood Companies Inc. 3200 W. Market Street, Suite 200 Fairlawn, OH 44333
Defendant

*Service of a copy of the within **** is hereby admitted.*

*Dated: *****

.....
*Attorneys for: *****

PLEASE TAKE NOTICE:

☐
Notice of
Entry

That the within is a (certified) true copy of a **** entered in the office of the clerk of the within named Court on ****.

☐
Notice of
Settlement

That an Order of which the within is a true copy will be presented for settlement to the Hon. ****, one of the judges of the within named Court, at ****, on ****, at ****.

Dated: New York, New York
July 11, 2023

CAMACHO MAURO, LLP

Attorneys for Plaintiff(s)

40 Wall Street | 41st Floor

New York, NY 10005